



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF U-H-

DATE: AUG. 31, 2018

**APPEAL OF TEXAS SERVICE CENTER DECISION**

**PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER**

The Petitioner, a surgeon and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing, the Petitioner was working as a trauma surgeon at [REDACTED] in South Korea. He states that he intends "to study for a better understanding of the breast cancer development and the better treatment methods for the [REDACTED] cases using the cancer genome analysis." The Petitioner goes on to state that the School of Medicine is the best place for cancer research based on population genetics using bioinformatics tools," and that "my expertise in the field that I have accumulated through my extensive studies in breast cancer research and clinical knowledge will be a great asset." A letter from [REDACTED] Assistant Professor at the [REDACTED] states that once the Petitioner is granted permanent residency, "I am willing to engage in research work with him and help him to further develop his expertise within my group or in a new position."<sup>4</sup>

The Petitioner submits several articles about the need for continuing research for the treatment of [REDACTED] and other types of breast cancer. As such, we find that his proposed research has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. His evidence includes letters of support from colleagues discussing

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner presented an academic credentials evaluation indicating that his Ph.D. certificate from the [REDACTED] is the foreign equivalent of a Ph.D. in medicine from a regionally accredited institution of higher education in the United States. See 8 C.F.R. § 204.5(k)(3)(i)(A).

<sup>4</sup> We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

the potential benefits of continuing his research in the treatment of breast cancer. For instance, [REDACTED] of [REDACTED] indicates that the results of the Petitioner's study of skin-sparing mastectomies showed the efficacy of this procedure, "opening up opportunities for these patients to spare more of their skin during the mastectomy and achieve better cosmetic results..." In addition, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. Accordingly, we find that the Petitioner meets the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. He submits copies of his educational credentials, including a Ph.D. degree in medicine, as well as several certificates showing his completion of professional workshops and membership in professional associations. Also, the record contains copies of numerous articles co-authored by the Petitioner that were published in medical journals, as well as copies of abstracts presented at conferences. This evidence, together with several reference letters from his fellow medical professionals and researchers that explain how the Petitioner has advanced the field's knowledge in the diagnosis and surgical treatment of breast cancer, shows that he is well positioned to advance his proposed research in the United States.

For example, [REDACTED] discusses an article that was coauthored by the Petitioner in 2006.<sup>5</sup> He indicates that this study, which analyzed the changing patterns in the occurrence of breast cancer in Korean women, has been frequently cited by other researchers, and states that "it can offer valuable information to screen and treat breast cancer in constantly increasing Asian immigrant population in the US. [sic]." The record, which in part includes evidence of the frequency with which other researchers have cited to this study, corroborates the significance of his findings and provides an example of the Petitioner's track record of successful research projects.

[REDACTED] of [REDACTED] describes two additional studies coauthored by the Petitioner in 2004 which focused on breast cancer screening and surgical treatment, and asserts that the Petitioner's "forte for developing a further understanding of breast cancer genes and treatments has already been put to good use by other researchers in the field." Again, the record supports [REDACTED] statement by showing the citation to these studies by numerous researchers in the field. In addition, [REDACTED] of the [REDACTED] College of Medicine submits a letter discussing three of the Petitioner's breast cancer research projects, including one completed in 2016 and recently published, and concludes that he "has already remarkably expanded our field's understanding of breast reconstruction procedures and characteristics of early diagnoses of breast cancer."

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<sup>5</sup> "Changing patterns in the clinical characteristics of Korean patients with breast cancer during the last 15 years," *Arch. Surg.* 2006; 141(2): 155-60.

The Petitioner's experience and expertise in his field, published work and its impact upon other researchers, record of success in contributing to research projects, and progress in the area of advancing the study of breast cancer surgical procedures and other treatments position him well to advance his proposed endeavor. We therefore find that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a surgeon and cancer researcher, the Petitioner possesses considerable experience and expertise in breast cancer screening and treatment methods, including surgery. The record also demonstrates the widespread benefits associated with research developments in his field and their broad application in cancer research. The Petitioner has documented his past successes in advancing medical research and providing influential research findings. In addition, his work has garnered interest from other researchers in the medical community who used it to further their own research. Based on the Petitioner's track record of successful research and the significance of his ongoing studies into breast cancer treatments, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.

Cite as *Matter of U-H-*, ID# 1483877 (AAO Aug. 31, 2018)